

**IN UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA**

In re:

MERCY HOSPITAL, IOWA CITY, IOWA,  
*et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-00623 (TJC)

(Jointly Administered)

Re: Dkt. Nos. 222 & 265

**UNITEDHEALTHCARE INSURANCE COMPANY, UNITED HEALTHCARE OF THE  
MIDLANDS, AND UNITED HEALTH MILITARY & VETERANS SERVICES, LLC’S  
LIMITED OBJECTION TO CURE AMOUNTS SET FORTH IN THE DEBTORS’  
NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS OR UNEXPIRED LEASES AND CURE COSTS**

UnitedHealthcare Insurance Company, United Healthcare of the Midlands and UnitedHealth Military & Veterans Services, LLC, on behalf of themselves, their affiliates, parents, and subsidiaries (collectively, “United”), hereby submit this limited cure objection to the cure amounts set forth in the Notice of Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs [Dkt. No. 265] (the “Cure Notice”), filed by Mercy Hospital, Iowa City, Iowa (“Mercy Hospital” or the “Debtor”) and its affiliated co-debtors, Mercy Services Iowa City, Inc. (“Mercy Services”) and Mercy Iowa City ACO, LLC (“Mercy ACO” and, together with Mercy Hospital and Mercy Services, the “Debtors”). In support of this objection,<sup>2</sup> United states as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or business identification number, as applicable, are: Mercy Hospital, Iowa City, Iowa (0391), Mercy Services Iowa City, Inc. (1044), and Mercy Iowa City ACO, LLC (9472).

<sup>2</sup> By email dated September 29, 2023, the Debtors’ counsel agreed to extend United’s deadline to object to the cure amounts to November 3, 2023.

## **I. BACKGROUND**

### **A. The Agreements**

1. United provides health care insurance benefits to members insured under its fully insured group medical policies through a network of providers who contract with United to render medical services to members. United also administers self-insured health plans of third parties, by which the members of those self-insured plans may also access medical care through United's network of providers. The Debtors have entered into various Agreements (as defined below), by which the Debtors are "in network" providers of medical services to United's members.

2. United entered into a Facility Participation Agreement with the Debtor with an effective date on or about April 15, 2008, as amended from time to time (the "FPA"), for medical services provided at Mercy Hospital.

3. United also entered into a Physician Association Participation Agreement (the "PAPA") with the Debtor's physician hospital organization, Mercy of Iowa City Regional Physician Hospital Organization (the "Debtor's PHO"), with an effective date of January 1, 2008, as amended from time to time, for medical services rendered by the Debtor's physicians.

4. Mercy Services is also party to the PAPA pursuant to a Participating PHO Health Care Professional Opt-In Form (the "Opt-In Form") executed by Mercy Services on or about January 1, 2008.

5. United also entered into a Physician Hospital Organization Participation Agreement (the "PHOPA" and together with the FPA and the PAPA, the "Agreements") with the Debtor's PHO with an effective date of April 1, 2013, as amended from time to time, for medical

services rendered by PHO physicians.<sup>3</sup>

6. Pursuant to the Agreements, the Debtors agreed to provide certain covered medical services to United's members, in exchange for certain fees. In connection with paying claims submitted by the Debtors under the Agreements, United may periodically overpay a claim for a variety of reasons. When this occurs, United has the right to be reimbursed for such overpayments under the terms of the Agreements.

**B. Bankruptcy Filing and United's Proofs of Claims**

7. On August 7, 2023 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions in this Court.

8. On September 20, 2023, United submitted a proof of claim in Mercy Hospital's case under Claim No. 0000010084 (the "Mercy Hospital Proof of Claim") for \$173,971.52 due to United under the Agreements in connection with pre-petition overpayments that the Debtors must reimburse to United.

9. On September 20, 2023, United also submitted a proof of claim in Mercy Services' case under Claim No. 0000010086 (the "Mercy Services Proof of Claim", and together with the Mercy Hospital Proof of Claim, the "Proofs of Claims") for \$4,722.29 due to United under the Agreements in connection with pre-petition overpayments that the Debtors must reimburse to United. A true and correct copy of the Proofs of Claims is attached hereto as **Exhibit A**.<sup>4</sup>

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<sup>3</sup> The Agreements contain United's highly confidential and sensitive commercial information. While the Debtors should have copies of the Agreements, other parties in interest may request copies of such Agreements by written request to the undersigned counsel and upon the entry into either an acceptable confidentiality agreement or the entry of an appropriate protective order. If requested by the Court, United will provide the Agreements to it for an *in camera* review.

<sup>4</sup> The back-up data for the Proofs of Claims contains confidential protected health information under the Health Insurance Portability and Accountability Act ("HIPAA"). The back-up data has been provided to the Debtors. Upon request to the undersigned counsel and entry of a qualified protective order under HIPAA, such back-up data

**C. The Cure Notice**

10. Also on September 20, 2023, the Debtors filed the Cure Notice which identifies contracts that could potentially be assumed and assigned to the Winning Bidder<sup>5</sup> (the “Potential Assumed Contracts”), and the amounts, if any, that the Debtors believe are owed to each counterparty to such Potential Assumed Contract due to any defaults that exist under such contracts. *See* Dkt. No. 265.

11. In the Schedule attached to the Cure Notice, the Debtors list the following eight service agreements with United among the Potential Assumed Contracts:

No.	COUNTER PARTY	CONTRACT CLASSIFICATION	CONTRACT TITLE	Cure
1271	UNITEDHEALTHCARE	SERVICE AGREEMENT	MS-DRG IA MEDICAID PAYMENT APPENDIX	-
1272	UNITEDHEALTHCARE	SERVICE AGREEMENT	HOME HEALTH SERVICES MEDICAID PAYMENT APPENDIX	-
1273	UNITEDHEALTHCARE	SERVICE AGREEMENT	IOWA MEDICAID HOME AND COMMUNITY BASED SERVICES AND LONG TERM SERVI	-
1274	UNITEDHEALTHCARE INSURANCE COMPANY	SERVICE AGREEMENT	AMENDMENT TO PROVIDER AGREEMENT	-
1275	UNITEDHEALTHCARE INSURANCE COMPANY	SERVICE AGREEMENT	AMENDMENT TO FACILITY PARTICIPATION AGREEMENT	-
1276	UNITEDHEALTHCARE INSURANCE COMPANY	SERVICE AGREEMENT	AMENDMENT	-
1277	UNITEDHEALTHCARE INSURANCE COMPANY	SERVICE AGREEMENT	IOWA STATE PROGRAMS REGULATORY REQUIRMENTS APPENDIX	-
1278	UNITEDHEALTHCARE INSURANCE COMPANY	SERVICE AGREEMENT	AMENDMENT TO PROVIDER AGREEMENT	-

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may be made available to a party in interest. If requested, United can make the back-up data availability to the Court for an *in camera* review.

<sup>5</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Cure Notice.

*See* Dkt. No. 265, at p. 21.

12. There is no cure designated for any of the referenced agreements between the Debtors and United.

13. Additionally, the Debtors have continued to operate and to do business with United after the Petition Date. As a result, additional overpayments between the Petition Date and the closing date may occur and must be reimbursed to United under the Agreements.

## **II. LIMITED OBJECTION**

12. To the extent any of the Potential Assumed Contracts are the Agreements, United hereby submits this limited objection to the cure amounts listed in the Cure Notice because (i) the Cure Notice fails to properly reflect the pre-petition amounts owed to United under the Agreements, and (ii) the Cure Notice fails to include in the cure amount overpayment liabilities that arise between the Petition Date and the closing date of the asset sale.

13. To assume the Agreements, the Debtors must cure or provide adequate assurance that they will promptly cure any defaults under the Agreements. *See* 11 U.S.C. § 365(b). As presently provided in the Cure Notice, the Debtors have failed to meet their obligations under § 365(b).

14. First, the Cure Notice fails to reflect that \$178,693.81 is owed to United in connection with pre-petition overpayments under the Agreements as reflected in the Proofs of Claims.

15. Second, through the ongoing operation of the Debtors' businesses subsequent to the Petition Date, additional overpayments will become due and owing under the Agreements before the asset sale closes. The Cure Notice must be amended to reflect the Debtors' obligation to promptly pay any such post-petition overpayment liability.

16. Accordingly, to the extent the Debtors intended to designate the Agreements in the Cure Notice, the Cure Notice should be updated to accurately reflect the cure amount due under the Agreements.<sup>6</sup>

17. United looks forward to working in good faith with the Debtors to attempt to resolve the cure amounts for the Agreements.

### **III. RESERVATION OF RIGHTS**

18. United hereby reserves its right to make such other and further objections as may be appropriate, including modifying the cure amount if additional amounts accrue or are determined to be owing under the Agreements before the effective date of assumption.

WHEREFORE, United respectfully requests that the Court enter an order (i) requiring the payment of the appropriate cure amount for the Agreements as set forth herein, and (ii) granting such further relief as the Court deems appropriate.

Dated: November 1, 2023

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<sup>6</sup> For the avoidance of doubt, United does not object to the assumption of the Agreements and solely objects to the proposed cure amount due as listed in the Cure Notice.

HEIDMAN LAW FIRM, PLLC

By: /s/ Jessica Board  
JESSICA A. BOARD, AT0012404  
1128 Historic Fourth Street  
P.O. Box 3086  
Sioux City, IA 51102  
Telephone: (712) 255-8838  
Facsimile: (712) 258-6714  
[Jessica.Board@heidmanlaw.com](mailto:Jessica.Board@heidmanlaw.com)

- and -

SHIPMAN & GOODWIN LLP

By: /s/Latonia C. Williams  
LATONIA C. WILLIAMS (*pro hac vice*  
pending)  
BRIAN G. REMONDINO (*pro hac vice*  
pending)  
One Constitution Plaza  
Hartford, CT 06103  
Telephone: (860) 251-5000  
Facsimile: (860) 251-5099  
[LWilliams@goodwin.com](mailto:LWilliams@goodwin.com)  
[BRemondino@goodwin.com](mailto:BRemondino@goodwin.com)

*Attorneys for UnitedHealthcare Insurance  
Company, United Healthcare of the Midlands,  
and UnitedHealth Military & Veterans Services,  
LLC*

CERTIFICATE OF SERVICE

On this the 1<sup>st</sup> day of November, 2023, I electronically filed the foregoing document with the Clerk of the Bankruptcy Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants. In addition, I hereby certify that on November 1, 2023, a true and correct copy of the foregoing was served by email or United States first class mail, postage prepaid, on the parties listed on the below Service List.

Jessica Board

Counsel to the Debtors (via Email)

Nyemaster Good, P.C.  
625 1<sup>st</sup> Street SE, Suite 400  
Cedar Rapids, IA 52401-2030  
Attn: Roy R. Leaf  
rleaf@nyemaster.com  
Attn: Dana W. Hempy  
dhempy@nyemaster.com  
Attn: Matthew McGuire  
mmcquire@nyemaster.com  
Attn: Kristina M. Stanger  
kmstanger@nyemaster.com

McDermott Will & Emery LLP  
444 West Lake Street, Suite 400  
Chicago, IL 60606  
Attn: Felicia Gerber Perlman  
fperlman@mwe.com  
Attn: Emily C. Keil  
ekeil@mwe.com

McDermott Will & Emery LLP  
2501 North Hardwood Street, Suite 1900  
Dallas, TX 75201  
Attn: Jack G. Haake  
jhaake@mwe.com

McDermott Will & Emery LLP  
333 SE 2<sup>nd</sup> Avenue, Suite 4500  
Miami, FL 33131  
Attn: Nathan M. Bull  
nbull@mwe.com

McDermott Will & Emery LLP  
1180 Peachtree St. NE, Suite 3350  
Atlanta, GA 30309  
Attn: Dnaiel M. Simon  
dmsimon@mwe.com

Counsel to the Committee (via Email)

Cutler Law Firm  
1307 50<sup>th</sup> Street  
West Des Moines, IA 50266  
Attn: Robert C. Gainer  
rgainer@cutlerfirm.com

Sills Cummis & Gross, PC  
One Riverfront Plaza  
Newark, NJ 07102  
Attn: Andrew H. Sherman  
asherman@sillscummis.com  
Attn: Boris I. Mankovetskiy  
bmankovetskiy@sillscummis.com

U.S. Trustee (via Email)

United States Trustee  
United States Federal Courthouse  
111 7<sup>th</sup> Avenue SE, Box 17  
Cedar Rapids, IA 52401-2101  
[USTPRegion12.CR.ECF@usdoj.gov](mailto:USTPRegion12.CR.ECF@usdoj.gov)

Counsel to United States Trustee (via Email)

Claire Davison, Esq.  
DOJ-UST  
210 Walnut Street, Room 793  
Des Moines, IA 50309  
claire.r.davison@usdoj.gov

Janet G. Reasoner, Esq. (via Email)  
U.S. Trustee  
111 7<sup>th</sup> Avenue, SE, Box 17  
Cedar Rapids, IA 52401  
janet.g.reasoner@usdoj.gov

Centers for Medicare and Medicaid Services (via Email)

[rokcmora@cms.hhs.gov](mailto:rokcmora@cms.hhs.gov)

Federal Trade Commission (via Email)

[electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov); [oig@ftc.gov](mailto:oig@ftc.gov)

Internal Revenue Service (via Email)

[millie.h.agent@irs.gov](mailto:millie.h.agent@irs.gov)

Iowa Department of Revenue (via Email)

[cio@iowa.gov](mailto:cio@iowa.gov)

United States Attorney (via Email)

[usaian.webmaster@usdoj.gov](mailto:usaian.webmaster@usdoj.gov)



Computershare Trust Company, N.A., as  
Master Trustee (via Email)  
Peter Chalik, Esq.  
Whitfield & Eddy, PLC  
699 Walnut Street, Suite 2000  
Des Moines, IA 50309  
chalik@whitfieldlaw.com

Nathan F. Coco, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
nfcoco@mintz.com

Megan M. Preusker, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
mpreusker@mintz.com

Kaitlin R. Walsh, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
krwalsh@mintz.com

William W. Kannel, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
bkannel@mintz.com

Preston Hollow Community Capital, Inc., as  
Bondholder's Representative (via Email)  
Peter Chalik, Esq.  
Whitfield & Eddy, PLC  
699 Walnut Street, Suite 2000  
Des Moines, IA 50309  
chalik@whitfieldlaw.com

Nathan F. Coco, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
nfcoco@mintz.com

Megan M. Preusker, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
mpreusker@mintz.com

Kaitlin R. Walsh, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
919 Third Avenue  
New York, Ny 10022  
krwalsh@mintz.com

William W. Kannel, Esq. (via Email)  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
bkannel@mintz.com

Stalking Horse Bidder (via Email)  
State of Iowa, on behalf of the State  
University of Ohio  
Lindsey L. Browning, Esq.  
Office of the Iowa Attorney General  
1305 E. Walnut Street  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
lindsey.browning@ag.iowa.gov

David E. Gordon, Esq. (via Email)  
Polsinelli PC  
1201 W. Peachtree Street NW  
Ste 1100  
Atlanta, GA 30309  
dgordon@polsinelli.com

John Whiteman, Esq. (via Email)  
Iowa Attorney General Office  
1305 East Walnut Street  
Des Moines, IA 50319  
john.whiteman@ag.iowa.gov

30 Largest Unsecured Creditors  
Allscripts Healthcare, LLC (via Email)  
Attn. Douglas Gentile, Chief Medical Officer  
305 Church at North Hills Street  
Raleigh, NC 27609  
d.gentile@allscripts.com

Medifis, Consolidated (via First Class Mail)  
Attn. Eric Christenson  
2121 N. 117<sup>th</sup> Avenue, Suite 200  
Omaha, NE 68164

Medirevv, LLC fka MediRevv, Inc. (via Email)  
Beth M. Brownstein, Esq.  
ArentFox Schiff LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Beth.Brownstein@afslaw.com

Bradley R. Kruse, Esq. (via Email)  
699 Walnut Street, Suite 1600  
Des Moines, IA 50309  
bkruse@dickinsonlaw.com

Nicholas A. Marten, Esq. (via Email)  
ArentFox Schiff LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Nicholas.Marten@afslaw.com

Matthew F. Prewitt, Esq. (via Email)  
ArentFox Schiff LLP  
233 South Wacker Drive, Suite 7100  
Chicago, IL 60606  
Matthew.Prewitt@afslaw.com

J&K PMS, Inc. (via Email)  
Attn. Warren Katz, President  
6737 Brentwood Stair Road, Suite 200  
Fort Worth, TX 76112  
kmitchek@p-m-s.com  
wkatz@p-m-s.com

Medical Record Associates LLC (via Email)  
cmatheson@mrahis.com

DePuy Synthes Joint Recon Inc. (via Email)  
Attn. Stephen White, President  
1302 Wrights Lane East  
West Chester, PA 19380  
DePuySpine@dpyus.jnj.com;  
info@dpyus.jnj.com

Owens and Minor, Inc. (via Email)  
Brittany B. Falabella, Esq.  
Hirschler Fleischer  
2100 East Cary Street  
PO Box 500  
Richmond, VA 23218  
bfalabella@hirschlerlaw.com

Wright Medical Technology Inc. (via Email)  
Attn. Robert Palmisano, President and CEO  
1023 Cherry Road  
Memphis, TN 38117  
uscustomerservice@wright.com

Iowa Heart Center (via Email)  
Attn. Rob Gavora, Division Vice President & Chief Administrative Officer  
5880 University Avenue  
West Des Moines, IA 50266

Smith & Nephew, Inc. (via Email)  
Attn. Adrianna Davies, Vice President  
7135 Goodlett Farms Parkway  
Cordova, TN 38016  
Adrianna.Davies@smith-nephew.com  
secretary@smith-nephew.com

Zimmer US, Inc. (via Email)  
legal.americas@zimmerbiomet.com

Barton Associates Inc. (via First Class Mail)  
Attn. Officer, Managing or Agent or Agent  
for Service of Process  
300 Jubilee Drive  
Peabody, MA 01960

Quest Diagnostics (via First Class Mail)  
Attn. James E. Davis, Chief Executive  
Officer, President, and Chairman  
500 Plaza Drive, Suite G  
Secaucus, NJ 07094

Intuitive Surgical, Inc. (via Email)  
investor.relations@intusurg.com

Revology, Inc. (via Email)  
Laura Michelle Hyer, Esq.  
Bradley & Riley, PC  
PO Box 2804  
Cedar Rapids, IA 52406  
lhyer@bradleyriley.com

Iowa Hospital Association (via First Class Mail)  
Attn. Chris Mitchell, Chief Executive  
Officer  
Attn. Randall Rubin, Chief Financial Officer  
100 E. Grand Avenue, Suite 100  
Des Moines, IA 50309

Medico-Mart, Inc. (via Email)  
Attn. Michael A. Brandess, Esq.  
Hirsch Blackwell LLP  
120 S. Riverside Plaza, Suite 2200  
Chicago, IL 60606  
michael.brandess@huschblackwell.com

Johnson & Johnson Health Care Systems Inc. (via Email)  
bpatel6@its.jnj.com  
eberez1@its.jnj.com

Olympus America, Inc. (via Email)  
Attn. Jeremy Pitz  
3500 Corporate Parkway  
PO Box 610  
Cedar Valley, PA 18034  
jeremy.pitz@olympus.com

Progressive Rehabilitation Associates, LLC (via Email)  
Attn. Benjamin Gregory Nielson  
Shuttleworth & Ingersoll, P.L.C.  
115 3<sup>rd</sup> Street, SE  
Suite 500  
Cedar Rapids, IA 52401  
bgn@shuttleworthlaw.com

Huntington Technology Finance (via Email)  
Attn. Mary Hart  
2285 Franklin Road  
Bloomfield Hills, MI 48302  
mary.hurt@huntington.com

MidAmerican Energy Services, LLC (via Email)  
bankruptcies@midamerican.com

Gallagher Benefit Services, Inc. (via Email)  
Attn. Jackie Morrow  
2850 Golf Road  
Rolling Meadows, IL 60008  
Jackie\_morrow@ajg.com

IdeaCom (via First Class Mail)  
Attn. John Anderson, President  
30 W. Water Street  
St. Paul, MN 55107

Medtronic USA (via Email)

Attn. Michael B. Keeley  
8200 Coral Sea Street NE  
Mounds View, MN 55112  
michael.b.keeley@medtronic.com

AAA Mechanical Contractors, Inc. (via Email)

jeffkoeppel@aaamech.com

Biomerieux Inc. (via Email)

us.servicecontracts@biomerieux.com  
contact.nordic@biomerieux.com

Healogics Wound Care & Hyperbaric Services, LLC (via Email)

Attn. Tara Holterhaus, Esq.  
Spencer Fane LLP  
13815 FNB Parkway, Suite 200  
Omaha, NE 68154  
tholterhaus@spencerfane.com

Elizabeth Lally, Esq. (via Email)

Spencer Fane LLP  
13815 FNB Parkway, Suite 200  
Omaha, NE 68154  
elally@spencerfane.com

Leanne McKnight Prendergast, Esq. (via First Class Mail)  
12620 Beach Boulevard, Suite 3, #126  
Jacksonville, FL 32246

Hayes Locums, LLC (via Email)

Bradley R. Kruse, Esq.  
699 Walnut Street, Suite 1600  
Des Moines, IA 50309  
bkruse@dickinsonlaw.com

BlueSky (via Email)

Attn. Tim Teague, Chief Executive Officer, and President  
5600 S. Quebec Street  
Greenwood Village, CO 80111  
tteague@blueskymss.com